

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

United States of America,

Plaintiff,

Case No. 13-20882

v.

Judith E. Levy
United States District Judge
David R. Grand
Magistrate Judge

Aaron Goldfein,

Defendant.

_____/

**ORDER FOR SUPPLEMENTAL BRIEFING REGARDING
DEFENDANT’S MOTION FOR COMPASSIONATE RELEASE
[261]**

On April 20, 2020, Defendant Aaron Goldfein filed a motion seeking a downward modification of his criminal sentence, and/or modification of his sentence to home confinement, pursuant to 18 U.S.C. § 3582(c)(1)(A)(i). (ECF No. 261.) Defendant, who is currently confined at FCI Elkton, alleges that his pre-diabetes and high blood pressure render him substantially likely to face a dire outcome should he contract the COVID-19 virus while imprisoned. (*Id.* at PageID.2728.) The United States responded in opposition to Defendant’s motion on April 27, 2020.

(ECF No. 266.) However, the Court requires additional information from the parties before it can properly adjudicate Defendant's motion.

Defendant argues that he attempted to apply for compassionate relief from the Bureau of Prisons, but that he was "denied the ability to do so." (ECF No. 267, PageID.2802.) Defendant argues that he attempted to "submit[] the BP 8 to a manager by the name of Mr. Zackasee," but that Mr. Zackasee "did not sign the form and refused to provide [Defendant] with a copy." (*Id.*) As of April 29, 2020, Defendant does not know the status of his administrative request. (*Id.*) The United States notes that Defendant "concedes that [he] did not exhaust his administrative remedies" and that, therefore, "[t]his failure is fatal to [Defendant]'s claim." (ECF No. 266, PageID.2781.)

The United States also notes that Defendant previously experienced COVID-19 symptoms "on or about March 23, 2020" and that Defendant was subsequently "placed in isolation By April 10, 2020, [Defendant]'s signs and symptoms of COVID-19 had fully resolved and he was returned to the general population. It is unknown whether [Defendant] formally tested positive for the virus or whether any

antibodies have been detected in his system.” (ECF No. 266, PageID.2770.)

So that the Court may properly adjudicate Defendant’s motion, the Court ORDERS supplementary briefing from the parties on the following two questions:

1. On what date did Defendant attempt to request administrative relief through Mr. Zackasee? What are FCI Elkhorn’s records pertaining to Defendant’s request?
2. The Court cannot determine from the parties’ briefing whether Defendant was tested for COVID-19—or merely isolated from the asymptomatic population—after he displayed “COVID-19-like symptoms.” If Defendant contracted COVID-19 and fully recovered, this fact is necessary to evaluate Defendant’s future risk of a dire outcome. The Court therefore ORDERS that Defendant be tested for COVID-19 and for COVID-19 antibodies—if he has not been so tested already—and that the parties report the results of these tests to the Court upon receipt.

The Court will hear oral argument on this motion on Monday, May 11, 2020.

IT IS SO ORDERED.

Dated: May 1, 2020
Ann Arbor, Michigan

s/Judith E. Levy
JUDITH E. LEVY
United States District Judge

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was served upon counsel of record and any unrepresented parties via the Court's ECF System to their respective email or First Class U.S. mail addresses disclosed on the Notice of Electronic Filing on May 1, 2020.

s/William Barkholz
WILLIAM BARKHOLZ
Case Manager